IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 642 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHRI DILIP @ DILIP LAKHIYO CHHAGAN LAKHANI - Petitioner(s)

Versus

THE DEPUTY POLICE COMMISSIONER &2 - Respondent(s)

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Appearance :

MR NM KAPADIA for Petitioner No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 1.

MR PD BHATE, APP for Respondent No(s).: 2.

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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 30/06/2005

ORAL JUDGMENT

1. By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order of externment dated 9.11.2004 passed by respondent no.1 as well as the order dated 19.4.2005 passed by respondent no.2 dismissing the appeal preferred by the petitioner against the order of externment dated 9.11.2004.

2. It appears from the record that the show cause notice dated 21.4.2004 came to be served upon the petitioner by the Assistant Commissioner of Police, “G” Division, Surat under Section 56(a)(b) of the Bombay Police Act, 1951 (“the Act” for short). It was alleged in the said show cause notice that the petitioner was dangerous person and was indulged in anti-social and illegal activities. It was alleged that on account of terror and fear of the petitioner, none was coming forward to file the complaint or depose against the petitioner. In the said show cause notice, one registered and two unregistered cases have been mentioned against the petitioner. The petitioner filed reply to the show cause notice on 18.5.2004 and thereafter written submissions were made by the petitioner on 23.6.2004. Ultimately, the order of externment came to be passed against the petitioner on 9.11.2004 by respondent no.1 which was served upon the petitioner on 15.2.2005.

3. Being aggrieved by the said order of externment dated 9.11.2004, the petitioner preferred the appeal under Section 59 of the Act before the Secretary, Home Department, Gandhinagar which came to be rejected vide order dated 19.4.2005. Against the aforesaid orders dated 9.11.2004 and 19.4.2005, the present Special Criminal Application is filed by the petitioner under Articles 226 and 227 of the Constitution of India.

4. Heard Mr.N.M.Kapadia, learned advocate appearing for the petitioner and Mr.P.D.Bhate, learned APP for the respondents at length.

5. The impugned order of externment came to be challenged by the petitioner on various grounds. It is mainly contended by the learned advocate appearing for the petitioner that there is a gross delay in conducting the proceedings of externment in view of the fact that the incidents which are stated are of January and March 2004 whereas the externment order came to be passed on 9.11.2004. It is submitted that subjective satisfaction is not recorded as per the provisions of Section 56(a) and (b) of the Act since there was no material placed before the Externing Authority regarding registration of the offence punishable under

Chapter 17 of the Indian Penal Code, and, therefore, subjective satisfaction of the externing authority is vitiated. It is further submitted that the externing authority has not supplied the copy of statements of the witness after withholding the identity of the witnesses which has deprived the petitioner of his right to file effect reply, and, therefore, it is violative of the principles of natural justice and fair play. It is, therefore, requested to quash and set aside the impugned order of externment.

6. In order to substantiate his contention, Mr.N.M.Kapadia has drawn the attention of this Court to Section 56(b) of the Act which deals with the offences punishable under Chapter XII, XVI and XVII of the Indian Penal Code, and, therefore, cannot attract provisions of Section 56(b) of the Act.

7. On the other-hand, Mr.Bhate, learned APP has opposed this petition and has tried to justify the show cause notice and the impugned order. He submitted that the offence registered against the petitioner is considered while passing the order. He submitted that the externing authority has recorded the subjective satisfaction while passing the order, and, therefore, it is requested that this Court may not interfere with the impugned order and dismiss the petition.

8. Upon perusal of the scheme of the Act, it transpires that before passing any order of externment under Section 56 of the Act, the externing authority is required to issue a notice to the proposed externee under Section 59 of the Act which has to be specific and in detail. At this stage, reference is required to be made to the decision in the case of Aswin Chandulal Jaishwal Vs. The Deputy Commissioner of Police, Vadodara City, reported in 1989(2) GLR 1429, in para 9, this Court has observed as under.:

“9. Shri Gupta has also stated in his affidavit that the Inspector, Vadi Police Station, Vadodara, had recorded statements of 11 persons in confidence. He further stated that he had applied mind on the relevant material of the case produced before him, which includes the statement of the persons recorded by the police. It is not stated in the notice that the statements of the witnesses were recorded by the police. If at all any such statements would have been recorded and intended to be relied upon, at least, reference of the statements, without disclosing the names, with the time and place of such alleged illegal activities of the petitioner should have been made in the notice so that the petitioner could have got an opportunity to explain

the said circumstances to lead evidence. Without giving him an opportunity to even letting the petitioner know that statements of 11 persons. It is true that general allegations are only required to be made in the notice, but when statements are relied upon for the externment order at least, the person to be affected by such order should be given an opportunity to explain at least the general nature of allegations to explain the circumstances, which weighed considerably with the Externing Authority, and therefore, also the order vitiates."

In this view of the matter, it is the duty of the respondent authority to give effective and reasonable opportunity to the petitioner by referring all the materials taken into consideration while passing the impugned order. If the material relied upon by the authority while passing the impugned order is not disclosed in the show cause notice and the same is considered in the externment order, it amounts to non-giving effective and reasonable opportunity for filing the reply against the show cause notice. Under the circumstances, the impugned order of externment dated 9.11.2004 passed by respondent no.1 which is confirmed in appeal vide order dated 19.4.2005 deserves to be quashed and set aside. For the reasons stated above, this petition is allowed. The order of externment dated 9.11.2004 passed by the Deputy Police Commissioner, Surat and confirmed in Appeal by the Deputy Secretary, Home Department, Government of Gujarat vide order dated 19.4.2005 under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.Direct service is permitted.

(Sharad D.Dave,J)

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